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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/584,488

04/13/2007

Zhendong Wu

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EXAMINER

MARCETICH, ADAM M

ART UNIT

PAPER NUMBER

3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,488	Applicant(s) WU, ZHENDONG	
	Examiner ADAM MARCETICH	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 12 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 7-21 is/are pending in the application.
- 4a) Of the above claim(s) 7-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/11/2007, 04/13/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 2, 3 and 6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Applicant cancels claims 2, 3 and 6. Election was made **without** traverse in the reply filed on 12 October 2009.
2. Applicant finds that claims 1, 4, 5 and 7-21 read on the elected species, since the claims describe details of the invention depicted in Figs. 1-3. However, this assertion is not persuasive, since the remaining figures are drawn to mutually exclusive embodiments. For example, Fig. 7 is drawn to a rod having a cavity containing working fluid, while Fig. 7 lacks working fluid within a rod. Additionally, Fig. 6 depicts two wiping bodies, while Fig. 7 depicts a single wiping body. Examiner withdraws claims 7-9, 11, 13-21 as being drawn to nonelected species. Claims 1, 4 and 5 are examined on the merits. The requirement is still deemed proper and is therefore made FINAL.
3. Examiner finds that the following claims read on the following species:

◆ Claims 1 and 4 are generic, and read on all species	◆ Claims 13, 16 and 17 read on species N, Fig. 25
◆ Claim 5 reads on species C, Fig. 6	◆ Claim 14 reads on species L, Fig. 23
◆ Claim 7 reads on species D, Fig. 7	◆ Claim 15 reads on species M, Fig. 24
◆ Claim 8 reads on species F, Fig. 9	◆ Claim 18 reads on species P, Fig. 27
◆ Claim 9 reads on species G, Fig. 10	◆ Claim 19 reads on species Q, Fig. 28
◆ Claim 11 reads on species H, Figs. 12-14	◆ Claim 20 reads on species R, Fig. 29
	◆ Claim 21 reads on species S, Fig. 30

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowe; John P. et al. (US 5826600).

6. Regarding claims 1, 4 and 5, Rowe discloses a wiper (col. 2, lines 27-29, Figs. 1-3, applicator assembly 10), comprising:

7. [1] a rod having a first end and a second end (col. 2, lines 44-49, Figs. 1, 2, applicator 20);

8. [1] a wiping body provided at the first end of the rod (col. 2, lines 44-49, Figs. 1, 2, applicator end-portion 24); and

9. [1] an outer packing characterized in that said outer packing is a firm tube-like container having both ends closed permanently (col. 2, lines 30-39, Figs. 1-3, casing 12 formed as cylinder of thermoplastic material with closed ends);

10. the tube-like container is provided with a circumferential easy break-off mark on the tube wall between both ends thereof (col. 2, lines 39-44, Figs. 1, 2, frangible section 18);

11. [1] the position of the easy break-off mark in the longitudinal direction of the tube-like container is such that the second end of the rod extends beyond the cross section

of the tube-like container having the easy break-off mark (Fig. 1, frangible section 18 depicted as between ends of applicator 20); and

12. [1] when the tube-like container is broken off along the easy break-off mark into two parts, the second end is exposed out of the broken opening of the parts with the wiping body (col. 3, lines 10-17, Fig. 4, depicting bending to break casing 12 at frangible section 18); and

13. [1] when the tube-like container is broken off along the easy break-off mark, a flexible deformation of the rod occurs under force without interfering with the breaking-off of the tube-like container and the rod can recover from the flexible deformation after said force that makes it deform is removed (Fig. 4, depicting handle section 14 bending when breaking casing 12);

14. [4] characterized in that said wiping body is impregnated with working fluid (col. 2, lines 60-64, casing section 16 containing end-portion 24 filled with mascara);

15. [5] characterized in that said wiping body provided at the first end of the rod is divided into two parts along the axial direction of the rod (col. 2, lines 44-49, Figs. 1, 2, series of flexible bristles 24').

16. Regarding the limitation of a rod recovering from flexible deformation, Examiner interprets the description and illustration (col. 2, lines 44-49, Fig. 4, bending casing 12) as demonstrating that applicator 20 is at least flexible enough to recover when deformed.

Response to Arguments

17. Applicant's arguments, see p. 7-12 filed 12 October 2009 with respect to the invention as anticipated by or obvious over Zygmunt (US 6,494,856) have been fully considered and are persuasive. Applicant amends claim 1 and dependent claims to amend away from Zygmunt. Therefore, no rejection is applied over Zygmunt. Instead, Examiner cites Rowe as teaching a wiper anticipating the claimed device.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

◆ Clarot; Tim et al.	US 7597901
◆ Van Dyke; Darrell W. et al.	US 6516947
◆ Rowe; John	US 6406451
◆ Korteweg; Wayne	US 4952204

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is (571)272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761